

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

THIS DOCUMENT RELATES TO:
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

**PODHURST ORSECK, P.A.'S MOTION FOR CLARIFICATION AND
FOR LEAVE TO PARTICIPATE IN THE JANUARY 10, 2019 HEARING**

Podhurst Orseck, P.A., respectfully seeks clarification concerning the scope of the record transmitted by the Claims Administrator to the Court in connection with the Court's Order (ECF No. 10361) setting the January 10, 2019 hearing on the NFL Parties' appeal of the Special Master's denial of the NFL's objection to the Special Master's determination that certain diagnoses made outside the Baseline Assessment Program were supported by medical evidence "generally consistent" with the criteria set forth in the Settlement Agreement (the "NFL's Appeal"), as well as leave to participate in the hearing on a limited basis.

Podhurst Orseck represents two retired NFL players—Settlement Class Members 100005741 and 100008258 (the "Affected Settlement Class Members")—who received Notices of Monetary Awards based on diagnoses made by Qualified MAF Physicians, confirmed by the Claims Administrator, and affirmed on appeal by the Special Master. Payment of their Monetary Awards has been stayed pending the NFL's Appeal, which challenges their entitlement to the Monetary Awards. To protect confidential Settlement Class Member information and in keeping with Rule 32 of the Rules Governing Appeals of Claim Determinations, attorneys for players potentially affected by the NFL's Appeal were directed to not file responsive briefs on the ECF

docket, but instead to submit them directly to the Claims Administrator, which would then transmit them to the Court via the Settlement portal. Podhurst Orseck submitted a brief to the Claims Administrator on behalf of the Affected Settlement Class Members on November 27, 2018, in accordance with that procedure, addressing fact-specific issues unique to each of the firm's individual clients.

The Court's Order setting the January 10, 2019 hearing (ECF No.10361) attached the Special Master's decision denying the NFL's objection, as well as the NFL's appellate brief and the response submitted by Co-Lead Class Counsel, both of which were redacted where necessary to protect confidential Settlement Class Member information. The brief submitted on behalf of the Affected Settlement Class Members, however, was not attached to the Court's Order.

Because the Affected Settlement Class Members' brief has not been made part of the public record as an attachment to the Court's Order, it is unclear whether the brief has been transmitted to the Court or is being treated as part of the record before the Court on the NFL's Appeal. The Affected Settlement Class Members, whose financial interests are directly at stake in the NFL's Appeal, therefore respectfully seek clarification that the Court received their brief, and that it is part of the record before the Court in deciding the NFL's Appeal, in accordance with Rule 32 of the Rules Governing Appeals of Claim Determinations as well as the requirements of due process.

In addition, the Order setting the January 10, 2019 hearing specifies that the Court will hear argument from counsel for the NFL Parties and Co-Lead Class Counsel Christopher Seeger. (ECF No. 10361.) Podhurst Orseck respectfully seeks leave to participate in the hearing on a limited basis, and if appropriate, to address how any case-specific, factual issues relating to the Affected Settlement Class Members may bear materially on arguments raised by NFL or Co-

Lead Class Counsel or by the Court's questions. Of course, Podhurst Orseck would refrain from repeating any legal arguments presented by Co-Lead Class Counsel. Since the Affected Settlement Class Members are parties to the NFL's Appeal and are being represented in their individual claims by Podhurst Orseck, and the evaluation of their fact-bound diagnoses are directly implicated by the NFL's Appeal, Podhurst Orseck should be permitted the opportunity to appear and be granted leave—if appropriate and at the Court's discretion—to briefly address at the hearing any material, fact-specific issues particular to either Affected Settlement Class Member's individual case.

WHEREFORE, Podhurst Orseck respectfully requests that the Court clarify for the public record whether the Court received the Affected Settlement Class Members' November 27, 2018 brief and whether it is being treated as part of the record before the Court, and further that the Affected Settlement Class Members' counsel be granted leave to participate, as appropriate, for a limited purpose at the January 10, 2019 hearing.

DATED: January 4, 2019

Respectfully submitted,

PODHURST ORSECK, P.A.
SunTrust International Center
One S.E. 3rd Ave, Suite 2300
Miami, FL 33131
Telephone: (305) 358-2800
Fax: (305) 358-2382

By: /s/ Steven C. Marks
STEVEN C. MARKS
Fla. Bar. No. 516414
Email: smarks@podhurst.com
STEPHEN F. ROSENTHAL
Fla. Bar No. 0131458
Email: srosenthal@podhurst.com
RICARDO M. MARTÍNEZ-CID
Fla. Bar No. 383988
Email: rmcid@podhurst.com
MATTHEW P. WEINSHALL
Fla. Bar No. 84783
Email: mweinshall@podhurst.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2019, I caused the foregoing document to be filed with the United States District Court for the Eastern District of Pennsylvania via the Court's CM/ECF system, which will provide electronic notice to all counsel and parties.

/s/ Steven C. Marks
Steven C. Marks, Esq.